

REQUEST FOR PROPOSALS
Referee Services for Conciliation Court
Sixth Judicial District Administration

I. REQUEST FOR PROPOSALS

- A. **Defined.** The Minnesota Sixth Judicial District Administration Office (Sixth District) is using a competitive selection process (referred to herein as “Request for Proposals” or “RFP”) to select an attorney vendor to provide Court Referee services for conciliation court cases in the Sixth District. This is not a bid, but a Request for Proposals that could become the basis for negotiations leading to a contract with a vendor to provide the tools and services described in this document.
- B. **Right to Cancel.** The Sixth District is not obligated to respond to any proposal submitted, nor is it legally bound in any manner whatsoever by the submission of a proposal. The Sixth District reserves the right to cancel or withdraw the request for proposals at any time if it is in its best interest. In the event the request for proposals is cancelled or withdrawn for any reason, the Sixth District shall not have any liability to any proposer for any costs or expenses incurred in conjunction with this request for proposals or otherwise. The Sixth District also reserves the right to reject any or all proposals, or parts of proposals, to waive any informalities therein, and to extend proposal due dates.

II. PROJECT OVERVIEW/SCOPE OF WORK

- A. The Sixth District is seeking proposals from Minnesota licensed attorneys to provide referee services for conciliation court cases. These services and any ancillary activities shall not exceed seven (7) days per calendar month; these days shall consist of no more than five (5) in-person or remote court days and two (2) administrative days. Typical scheduling for this work is one (1) morning calendar or one (1) afternoon calendar, with a potential for both. Time to complete a calendar depends upon the number of cases assigned to it, but typically will not exceed 4 hours. Conciliation court cases are presumptively heard remotely, unless exceptional circumstances exist to deviate to an in-person setting.

Services performed will be highly responsible professional legal work in adjudicating assigned conciliation court cases in the Minnesota State Court System. Work assignments are carried out with a substantial degree of discretion and independent judgement within the framework of state laws and rules of procedure applicable to the administration of the assigned court and judicial proceedings.

- B. Scope of Work and Requirements

The Independent Contractor Shall:

1. Have graduated from an accredited law school; be in possession of a certificate of admission to the bar of the State of Minnesota; be eligible to practice law

before the courts of the State of Minnesota; have a minimum of five (5) years experience as a practicing attorney.

2. Have extensive knowledge of state laws and court rulings as they pertain to the assigned division of the court; have thorough knowledge of general and specific law, state laws, established precedents, and sources of legal reference; have thorough knowledge of court procedures, rules of evidence, and trial and courtroom procedures; have the ability to apply legal principles and specialized knowledge to individual cases and problems; have the ability to prepare for hearings and trials, hear difficult cases and present findings, decisions, and other material clearly and logically in oral and written form; have the ability to establish and maintain effective working relationships with others.
3. Preside over assigned hearings; reviews court calendars before scheduled sessions of court; grants continuances; reads or listens to allegations and determines if action cited is supported by facts; hears and evaluates evidence of witnesses and technical experts; listens to presentation of case; rules on admissibility of evidence and methods of conducting testimony
4. Conducts legal research including reviewing, analyzing, studying, searching, and annotating laws, court decisions, documents, opinions, briefs and related legal authorities to prepare for court proceedings and litigated matters.
5. Prepares court orders and reports based on evidence and findings and gives to judge for review and approval.

III. SUBMISSION REQUIREMENTS.

A. **General Requirements** – each response must include the following or it may be excluded from moving through to the next phase of response scoring:

1. **Certificate of Insurance.** Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of Minnesota Statute § 176.181, subd. 2. Vendor's RFP response must include one of the following: (1) a certificate of insurance, or (2) a written order from the Commissioner of Insurance exempting the responder from insuring liability for compensation and permitting the responder to self-insure the liability, or (3) an affidavit certifying that the responder does not have employees and therefore are exempt pursuant to Minnesota Statutes § 176.011, subd. 10; 176.031; and 176.041. See Section XV of the sample State contract attached as Appendix II for details on additional insurance requirements that must be provided upon request of the Sixth District.
2. **Non-Collusion Affirmation.** Responders must complete the Affidavit of Non-Collusion (Appendix I) and include it with its RFP response.

3. **Contract Terms.** Shall be a two (2) year contract, July 1, 2023 through June 30, 2025, with an option of an additional two (2) year renewal. The Sixth District's proposed contract template is set forth in Appendix II (contract). No work can be started until a contract (and where necessary a subcontractor participation agreement), in the form approved by the State Court Administrator's Legal Counsel Division, has been signed by all necessary parties in accordance with state court procurement and contract policies. The templates included in the appendices are sample forms and are not to be interpreted as offers.
- B. **Proposal Contents.** Each submission in response to this request for proposal must contain:
1. **Transmittal Letter.** A transmittal letter must accompany the proposal. The letter must be in a form of a standard business letter and be signed in ink by an individual authorized to legally bind the responder. It must include:
 - a. A statement indicating the if responder is an individual, a group of individuals, or corporation or other legal entity qualified to provide services set forth in the proposal.
 - b. A statement identifying the individual(s) involved in the preparation of the proposal.
 - c. A statement summarizing the responder's guiding principles and values regarding the practice of law.
 2. **Resume.** The resume of individual(s) who would perform the services outlined in this request for proposal. The resume must be up to date, include the names and telephone numbers of at least three references and demonstrate the responder's knowledge and expertise to provide services set forth in the proposal.
 3. Documentation indicating the financial parameters within which the responder is willing to perform these services, and the responder's availability to the court during the time indicated. Please be as specific as possible, including details such as:
 - Proposed daily, or monthly, rate.
 - The maximum time per month the responder can commit.
 - Other.All reasonable proposals will be considered.
 4. A not-to-exceed cost to include identification of the assumptions made and the rationale used to prepare the estimate.
 5. A written statement acknowledging either no conflict of interest or identifying any conflicts of interest as it relates to this project.

IV. SUBMISSION OF PROPOSALS.

A. **Proposal Timeline.**

1. Posting Date on State MJB Website [MJB Court Public Website - Public Notice](#) : April 14, 2023
2. Questions Due: No later than May 05, 2023
3. Answers Posted: May 12, 2023
4. Proposal Submission Deadline: June 02, 2023
5. Vendor interviews will be scheduled if needed.
6. Subsequent selection as soon thereafter as possible.

B. **Amendments.** Any amendments to this RFP will be posted on the MJB website.

C. **Questions.** All questions about this RFP must be submitted in writing via email to the Sixth District's sole point of contact identified in this paragraph no later than Friday, May 05, 2023, 4:30 p.m. Other court personnel are not allowed to discuss the Request for Proposals with anyone, including responders, before the proposal submission deadline.

Mark Hoyne
District Administrative Manager
Sixth Judicial District Administration
227 West 1st Street, Suite 302
Duluth, MN 55802
mark.hoyne@courts.state.mn.us

D. **Answers to Questions.** Timely submitted questions and answers will be posted on the Judicial MJB website by the end of the day on Friday, May 12, 2023, and will be accessible to the public and other proposers.

E. **Sealed Proposal and Submittal Address.** Your proposal must be submitted in writing no later than Friday, June 02, 2023, 4:30 p.m., in a sealed envelope to:

6thDistrictBids@courts.state.mn.us

F. **Signatures.** Proposal must be signed, in the case of an individual, by that individual, and in the case of an individual employed by a firm, by the individual and an individual authorized to bind the firm.

G. **Deadline; Opening; Public Access.** Proposals must be received by the Sixth Judicial District no later Friday, June 02, 2023, 4:30 p.m. Proposals will be opened the following

business day. Do not place any information in your proposal that you do not want revealed to the public. Documentation sent with the proposal, including the proposal, will become the property of the Sixth District.

H. **Late Proposals.** Late proposals will not be accepted or considered.

V. PROPOSAL EVALUATION.

- A. The Sixth District will evaluate all complete proposals received by the deadline. Incomplete proposals, late proposals, or proposals sent to any other address will not be considered. In some instances, an interview or demonstration may be part of the evaluation process.
- B. The Sixth District reserves the right to determine, at its sole and absolute discretion, whether any aspect of a proposal satisfactorily meets the criteria established in this RFP.
- C. The Sixth District reserves the right to request additional information from Vendors during any phase of the proposal evaluation process. During the evaluation and selection process, the Sixth District may require the presence of Vendor's representatives at a vendor conference. During a vendor conference, a vendor may be asked to answer specific questions. Vendors are required to travel at their own expense to for the demonstration of the product and answer questions. Notification of any such requirements will be given as necessary.
- D. The Sixth District may elect not to award a contract solely on the basis of this RFP, and will not pay for the information solicited or obtained. The information obtained will be used in determining the alternative that best meets the needs of the Sixth District.

**STATE OF MINNESOTA
AFFIDAVIT OF NON-COLLUSION
(Must be submitted with Response)**

I swear (or affirm) under the penalty of perjury:

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the Request for Proposals has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent (including a partner) of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Proposer's Firm Name: _____

Authorized Signature: _____

Date: _____

Appendix II - Minnesota Sixth Judicial District

CONTRACT FOR SERVICES (non-technology related)

THIS CONTRACT, and amendments and supplements thereto, is between State of Minnesota, acting through its _____, address _____ (hereinafter "STATE") and _____, an independent contractor, not an employee of the State of Minnesota, address _____ (hereinafter "CONTRACTOR"),

WHEREAS, the STATE, pursuant to Minnesota Statutes 2019, Section _____ is empowered to _____, and

WHEREAS, the STATE desires to _____ but lacks sufficient staff, and

WHEREAS, CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein.

NOW, THEREFORE, it is agreed:

I. **DUTIES.** CONTRACTOR, who is not a STATE employee, shall provide referee services for conciliation court cases in the Sixth Judicial District. Services include, but are not limited to, presiding over conciliation court hearings, preparation of orders and memorandums, and collaboration with Sixth District judges and staff. Services not to exceed seven (7) days per calendar month; these days shall consist of no more than five (5) in-person or remote court days and two (2) administrative days. Contractor agrees to sign and be bound to the terms of the Appropriate Use of Data and Records Acknowledgement, which is made a part of this contract as Exhibit A.

II. **CONSIDERATION AND TERMS OF PAYMENT.**

A. **Consideration** for all services performed and goods or materials supplied by CONTRACTOR pursuant to this contract shall be paid by the STATE as follows:

1. Compensation: _____.
2. Reimbursement for travel and subsistence expenses actually and necessarily incurred by CONTRACTOR performance of this contract in an amount not to exceed _____ dollars (\$_____); provided, that CONTRACTOR shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current Judicial Branch Policy on Employee Travel and Business Expense Reimbursement Procedure. CONTRACTOR shall not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE. The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR shall not exceed _____ dollars (\$_____).

B. **Terms of Payment.** Payments shall be made by the STATE promptly after CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Section VII. An invoice shall be submitted on the ____ day(s) of each _____ for billable costs incurred by the CONTRACTOR during the immediately preceding _____.

III. **TIME REQUIREMENTS.** Time is of the essence. CONTRACTOR shall comply with all of the time requirements described in this contract.

IV. **CONDITIONS OF PAYMENT.** All services provided by CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with the CONTRACTOR'S duties set forth in section I of this contract and all applicable federal, state, and local laws, ordinances, rules and regulations. CONTRACTOR shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

V. **TERMS OF CONTRACT.** This contract shall be effective on July 1, 2023 and shall remain in effect until June 30, 2025 or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. **CONTRACTOR UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS CONTRACT UNTIL ALL REQUIRED SIGNATURES HAVE BEEN OBTAINED, AND THE STATE'S AUTHORIZED REPRESENTATIVE NOTIFIES CONTRACTOR TO BEGIN WORK.**

VI. **CANCELLATION.**

- A. This contract may be cancelled by the STATE at any time, with or without cause, upon thirty (30) days' written notice to the other party. In the event of such a cancellation, CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
- B. The STATE may immediately cancel this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Cancellation must be by written or facsimile transmission notice to CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.

VII. **STATE'S AUTHORIZED REPRESENTATIVE.** The STATE'S Authorized Representative for the purposes of administration of this contract is _____. Such representative shall have final authority for acceptance of CONTRACTOR'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Section II (B).

VIII. **ASSIGNMENT.** CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which CONTRACTOR may be merged, acquired or consolidated or which may purchase all or substantially all of the business assets of CONTRACTOR. CONTRACTOR shall notify the STATE in writing if another person/entity acquires, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of CONTRACTOR. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. The STATE reserves the right to require the acquiring person/entity to promptly become a signatory to this contract and any and all Work Order Contracts by amendment or other document so as to help assure the full performance of this contract.

IX. **AMENDMENTS.** Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.

X. **LIABILITY.** CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.

XI. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six (6) years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.

XII. **CONFIDENTIALITY, DISCLOSURE AND USE.** CONTRACTOR shall not disclose to any third party any information that is both: (A) made available by the STATE or its agents to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (B) inaccessible to the public pursuant to the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time. If the CONTRACTOR receives a request to release the information referred to in this Clause, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.

XIII. **RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS.**

- A. The STATE shall own all rights, title and interest in all of the materials conceived or created by the CONTRACTOR, or its employees or subcontractors either individually or jointly with others and which arise out of the performance of this contract, including any report, study, computer software, database, model, invention, photograph, negative, audio or video recording, or other item or documents (hereafter "MATERIALS"). CONTRACTOR hereby assigns to the STATE all rights, title and interest to the MATERIALS. CONTRACTOR shall, upon request of the STATE, execute all papers and perform all other acts necessary to assist the STATE to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS.

The MATERIALS created by CONTRACTOR, its employees or subcontractors, individually or jointly with others shall be considered "works made for hire" as defined by the United States Copyright Act. CONTRACTOR shall remit all of the MATERIALS to the STATE upon completion, termination or cancellation of this contract. CONTRACTOR, its employees and subcontractors shall not copy, reproduce, allow or cause to have the MATERIALS copied or reproduced or used for any purpose other than the performance of the CONTRACTOR'S obligations under this contract without the written permission of the STATE'S authorized representative. Nothing in this Article shall be construed to limit the CONTRACTOR'S obligation to comply with Article XI of this contract.

- B. CONTRACTOR represents and warrants that MATERIALS produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Without limiting section X, CONTRACTOR shall indemnify and defend the STATE at CONTRACTOR'S expense from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of the MATERIALS infringe upon the intellectual property rights of another. CONTRACTOR shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in CONTRACTOR'S or the STATE'S opinion is likely to arise, CONTRACTOR shall, at the STATE'S discretion, either procure for the STATE the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

XIV. AFFIRMATIVE ACTION.

- A. **Covered Contracts and Contractors.** If this contract exceeds \$100,000 and CONTRACTOR employed more than forty (40) full-time employees on a single working day during the previous twelve months in Minnesota or in the state where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than forty (40) full-time employees in another state that does not have a certificate of compliance, (also known as a "Workforce Certificate"), must certify that it is in compliance with federal affirmative action requirements by submitting to the Minnesota Department of Human Rights an affirmative action plan approved by the federal government or other governmental entity, and obtain a Workforce Certificate from the Minnesota Commissioner of Human Rights. If CONTRACTOR is exempt from obtaining a Workforce Certificate as required by Minn. Stat. § 363A.36, CONTRACTOR shall certify in writing to the Commissioner of Human Rights that it is exempt, and determination of exempt status shall be made by the Commissioner of Human Rights. CONTRACTOR understands that if during the term of this contract CONTRACTOR employs more than 40 full time employees in MN or another state, CONTRACTOR must comply as provided in this Affirmative Action section of this contract. CONTRACTOR shall submit to the Minnesota Department of Human rights within five (5) business days of final contract execution, the names of CONTRACTOR employees during the previous 12 months, date of separation if applicable, and the state in which the persons were employed. Documentation should be sent to "compliance.MDHR@state.mn.us."
- B. **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the "Commissioner" as indicated by a Workforce Certificate. The law addresses the issuance of fines, and suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- C. Minn. R. Parts 5000.3400-5000.3600 provide:
1. **General.** Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
 2. **Disabled Workers.** The contractor must comply with the following affirmative action requirements for disabled workers:

- a. The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b. The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- D. **Consequences.** The consequences for a contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, issuance of fines, or suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.
- E. **Certification.** CONTRACTOR hereby certifies and warrants that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 (including, where applicable, federal affirmative action requirements) and is aware of the consequences for non-compliance.
- XV. **WORKERS' COMPENSATION.** In accordance with the provisions of Minnesota Statutes, Section 176.182, as enacted, the CONTRACTOR shall provide acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, subdivision 2, as enacted, prior to commencement of any duties to be performed under this contract.
- XVI. **ANTITRUST.** CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.
- XVII. **OTHER PROVISIONS.**
- A. **Warranties.**
 - 1. **Original Works.** In performing its obligations hereunder, CONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of CONTRACTOR or of any third party, and except for components already in the public domain, all software, documentation, information and other materials provided or furnished by CONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.
 - 2. **Professional Services.** CONTRACTOR represents and warrants to the STATE that it has the proper training, skill and background so as to be able to perform all services required of CONTRACTOR pursuant to this contract in a competent and professional manner, and all such work shall be of professional quality.

3. **Mutual Representations and Warranties.** CONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.
- B. **Injunctive Relief.** Without limiting section X, CONTRACTOR acknowledges that the STATE will be irreparably harmed if CONTRACTOR'S obligations under sections XII and XIII of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by CONTRACTOR of its obligations. Therefore, CONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by CONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. CONTRACTOR shall be liable to the STATE for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.
- C. **Relationship of the Parties.** CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of the STATE.
1. Within the Scope of Work, Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract. CONTRACTOR may conduct other business unrelated to this contract during the term of this contract as long as it does not affect in any significant way CONTRACTOR'S performance under this contract and CONTRACTOR's compliance with all other terms and conditions of this contract.
 2. CONTRACTOR understands and agrees that the STATE is not withholding any taxes from the fees paid to CONTRACTOR pursuant to this contract and that CONTRACTOR is solely responsible for any taxes and other amounts to be paid as a result of the fees paid to CONTRACTOR pursuant to this contract. Without limiting section X, CONTRACTOR will indemnify the STATE for any damages or expenses, including attorney's fees, and legal expenses, incurred by the STATE as a result of CONTRACTOR's failure to pay any such taxes or other amounts. At the STATE's request, CONTRACTOR shall provide proof of payment of any such required taxes or other amounts.
 3. CONTRACTOR will pay interest on late payments to its permitted subcontractors as specified in Minn. Stat. § 16A.1245.
 4. This contract shall not be considered or construed to be a partnership or joint venture. Neither CONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
 5. CONTRACTOR hereby waives and foregoes the right to receive any benefits given by the STATE to its regular employees, including, but not limited to, health benefits and vacation and sick leave benefits. CONTRACTOR agrees that if any government agency or court of law claims that CONTRACTOR is an employee, CONTRACTOR agrees that CONTRACTOR is not covered under these plans. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the CONTRACTOR by virtue of CONTRACTOR's services to the STATE, and is effective for the entire duration of this contract. This waiver is effective independently of CONTRACTOR's employment status as adjudged for taxation purposes or for any other purpose.
- D. **Consent to Release of Certain Data.** Under Minn. Stat. § 270C.65 and other applicable law, CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring CONTRACTOR to file state tax returns and pay delinquent state tax liabilities, if any.
- E. **Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without the prior written approval from the STATE'S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public

notices prepared by or for CONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

- F. **Endorsement.** CONTRACTOR must not claim that the STATE endorses its products or services.
- G. **Notices.** Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) the address first set forth herein, if to CONTRACTOR; (2) at the address first set forth herein, if to the STATE, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King, Jr. Blvd, St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.
- H. **Non-Exclusivity.** This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of CONTRACTOR to provide services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.
- I. **Facilities and Use Conditions.** Without limiting CONTRACTOR's responsibilities under any other section of this contract, to the extent that CONTRACTOR utilizes STATE provided on-site facilities (including, but not limited to, computers, desks, Internet connections, etc.) to perform CONTRACTOR's duties under this contract, CONTRACTOR must comply with all policies of the STATE and the Minnesota judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policies on the Use of the Internet and Other Electronic Communication Tools and Drug Free Workplace as the same may be amended and replaced from time to time .
- J. **Equal Pay Certificate.** The STATE cannot enter into an agreement that exceeds \$500,000 with a CONTRACTOR who has 40 or more full time employees in Minnesota or a state where CONTRACTOR has its primary place of business, on a single day during the prior twelve months, unless CONTRACTOR has a valid Equal Pay Certificate issued by the Minnesota Department of Human Rights or has certified in writing that it is exempt. CONTRACTOR certifies that it is in compliance with Minnesota Statutes section 363A.44 and is aware of the consequences for non-compliance. CONTRACTOR represents and warrants that as of the effective date of this contract CONTRACTOR employs less than 40 full-time employees on a single working day. CONTRACTOR understands that if during the term of this contract CONTRACTOR employs more than 40 full time employees in Minnesota or another state CONTRACTOR must comply as provided in this Equal Pay Certificate section of this contract. CONTRACTOR shall submit to the Minnesota Department of Human rights within five (5) business days of final contract execution, the names of CONTRACTOR employees during the previous 12 months, date of separation if applicable, and the state in which the persons were employed. Documentation should be sent to "compliance.MDHR@state.mn.us."
- K. **Miscellaneous.**
1. The provisions of sections VII, X, XI, XII, XIII, XVI, and XVII shall survive any cancellation or termination of this contract as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.
 2. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
 3. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. CONTRACTOR hereby irrevocably

consents and submits itself to the personal jurisdiction of said courts for that purpose.

4. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.
5. This contract sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter; provided that all terms and conditions of all preexisting contracts or agreements between the parties shall continue in full force and effect except as supplemented or modified by this contract. In the event of any inconsistency or conflict between the terms of this contract and any other agreement between the parties, the terms of this contract shall govern.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

1. CONTRACTOR:

CONTRACTOR certifies that the appropriate persons have executed the contract on behalf of CONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation with more than one individual serving as corporate officer, two corporate officers must execute)

<i>By</i>
<i>Title</i>
<i>Date</i>

<i>By</i>
<i>Title</i>
<i>Date</i>

<i>(reserved)</i>

2. STATE:

Person signing certifies that applicable procurement policies have been followed. Where contract and amendments exceed \$50,000, signature of State Court Administrator or her/his Deputy is also required.

<i>By</i>
<i>Title:</i>
<i>Date</i>

<i>By</i>
<i>Date</i>

3. Funds have been encumbered as required by State Court Finance Policy by:

<i>By</i>
<i>Date</i>
<i>Contract No.</i>

Approved as to form and execution for STATE by:

(reserved)

<i>By</i>
<i>Date</i>